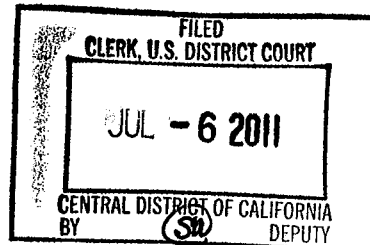
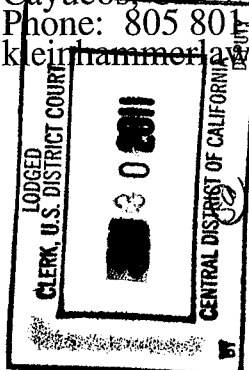


ORIGINAL

Richard Kleinhammer, Pro se  
P.O. Box 649  
Cayucos, CA 93430-0649  
Phone: 805 801-1881  
kleinhammerlaw@hotmail.com



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

RICHARD KLEINHAMMER,

Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,

Defendant(s)

Case No.: CV-08-3843-JFW(JEM)

~~PROPOSED~~  
**PROTECTIVE ORDER**  
**RE: PLAINTIFF'S MEDICAL RECORDS**  
**AND INFORMATION**

Case Filed: June 12, 2008  
Discovery close: June 17, 2011  
Pre-trial conference: none set  
Trial: none set

The honorable John E. McDermott

This order governs the production to defendants of the medical records specified in their subpoena to Dr. Kunin.

In connection with discovery of medical records there is a presumptive need to protect these sensitive disclosures. *See* Fed. R. Civ. Proc. 26(c).

Pursuant to the Department of Health and Human Service regulations a "covered entity" may disclose only the protected health information expressly authorized by this order. 45 C.F.R. § 164.512(e)(1)(i). This court has determined that doctor Kunin is a "covered entity" that provides public health information or paid medical services.

Therefore in accordance with Health Insurance Portability and Accountability Act (HIPAA) Privacy Regulations, 45 CFR § 164.512(e), doctor

1 Kunin is authorized to produce to defendants counsel the medical records  
2 specified in their subpoena to Dr. Kunin. However after the June 14, 2011 order to  
3 compel production of medical records the subpoenaed medical records were  
4 subsequently produced and docketed on June 16, 2011.

5  
6 **PROTECTED MATERIAL AS FOLLOWS:**

7  
8 **CONFIDENTIAL DEFINED**

9 1. Plaintiff's medical and health records are defined as confidential  
10 pursuant to HIPAA except medical bills and, therefore, additional disclosures will  
11 be conducted pursuant to the following terms, restrictions and conditions.

12  
13 **PRESUMPTIVELY PUBLIC**

14 2. All court records are presumptively available to the public.

15  
16 In this case medical records to be produced by  
17 doctor Kunin have already been docketed. In  
18 addition doctor Ashby, Leary, Chou, Gunzdik,  
19 Cassim and other medical records regarding  
20 plaintiff have also been docketed.

21 3. The protections conferred by this Order do not cover the following  
22 information: (a) any information that is in the public domain at the time of  
23 disclosure to a Receiving Party or becomes part of the public domain after its  
24 disclosure to a Receiving Party as a result of publication not involving a violation  
25 of this Order, including becoming part of the public record through trial or  
26 otherwise; and (b) any information known to the Receiving Party prior to the  
27 disclosure or obtained by the Receiving Party after the disclosure from a source  
28

1 who obtained the information "lawfully", that was not objected to, and is under no  
2 obligation of confidentiality to the Designating Party accept as follows:

3  
4 **CONFIDENTIAL DESIGNATION**

5 4. Any production of information by the parties, counsel, individual or a  
6 covered entity without its being designated as "CONFIDENTIAL - SUBJECT TO  
7 PROTECTIVE ORDER" shall not be deemed a waiver of any claim of  
8 confidentiality as to such information, and the same may thereafter be designated  
9 "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".

10 5. Within 5 days of this order all medical and health records  
11 already received and those received thereafter shall be stamped or embossed with a  
12 legend stating "**CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER**".

13 6. Within 10 days of this order any covered entity will be served with  
14 this protective order that has already provided medical records or information and  
15 notice shall also be served on all parties.

16 7. A party or protected third party may designate information as  
17 CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER regarding any health  
18 or medical information or materials it produced or produces, either voluntarily or  
19 pursuant to discovery in this action, to any party in connection with this action, to  
20 the extent such information constitutes confidential information as defined by this  
21 order.

22 8. The designation by a third party or party as confidential constitutes a  
23 representation to the court that such party or protected person in good faith believe  
24 that the information so designated constitutes confidential information.

25 9. Subsequent medical and health care designated or labeled  
26 CONFIDENTIAL materials are to be filed under seal unless there is a waiver of  
27 confidentiality by plaintiff.  
28

## LIMITED DISCLOSURE

10. This order prohibits the parties from using or disclosing the Confidential protected medical and health information for any purpose other than the litigation or proceeding for which such information was requested.

11. This order prohibits the parties from using or disclosing the Confidential medical and health materials or qualifying as confidential other than for purposes solely related to this litigation and for no other purpose.

12. Notwithstanding the provisions of this protective Order, nothing in this Order shall:

- a. limit plaintiff from disclosure of his own Confidential protected information and health records.
- b. limit the author or designee from disclosing and presenting health records for purposes related to this litigation or related litigation.

13. Information contained in Plaintiff's medical records shall be disclosed only to counsel of record in this action or only to individuals certified by such counsel as employed by or assisting counsel in preparation for, or at the trial of, this action and further includes disclosure to:

- a. The court and all person assisting the Court in this actions
- b. The jury if presented at a trial
- c. The party or non party that authored or produced the records
- d. any other individual that the parties agree to in writing
- e. a judge or magistrate at a hearing
- f. a consultant or expert qualified to review medical and health records

Before viewing the privilege medical records all individuals assisting defendants counsel in some manner related to this litigation shall be provided a copy of this order and sign the attached exhibit A non-disclosure agreement which must delivered to plaintiff within 5 days.

3 3

1

2 USE AT TRIAL

3 14. In the event that this case proceeds to trial, all of the information that  
4 was designated as confidential and/or kept and maintained pursuant to the terms of  
5 this protective order becomes public and will be presumptively available to all  
6 members of the public, including the press, unless sufficient cause is shown in  
7 advance of trial to proceed otherwise.  
8

9 CONTESTING DESIGNATION AND OBJECTIONS

10 15. This Order presumptively categorizes medical and health information  
11 and material as confidential. This order is made without prejudice to a party's  
12 right to contest a particular document or portion thereof as being non confidential.  
13 Parties should attempt to resolve any disputes about the designation prior to  
14 seeking relief from the court.

15 16. This order is made without prejudice to presenting any timely  
16 objections unless already untimely to the contest the relevancy, admissibility,  
17 materiality and other properly raised objections to medical and health information  
18 and documents whether designated Confidential or non Confidential.  
19

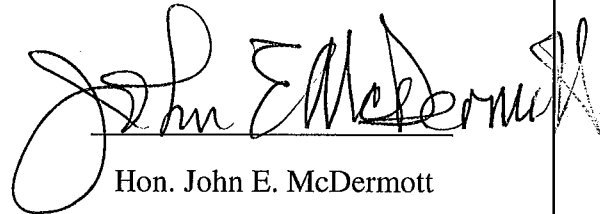
20 PROCEDURES UPON TERMINATION

21 17. Within 60 days after the final disposition of this action each Receiving  
22 Party or individual must return all designated Confidential Protected Material to  
23 the plaintiff or destroy such material. As used in this subdivision, "all Confidential  
24 Protected Material" includes all copies, abstracts, compilations, summaries, and  
25 any other format reproducing or capturing any of the Confidential Protected  
26 Material. Whether the Confidential Protected Material is returned or destroyed, the  
27 Receiving Party must submit a written certification to the plaintiff by the 60 day  
28 deadline that (1) identifies (by category, where appropriate) all the Confidential

1 Protected Material that was returned or destroyed and (2) affirms that the  
2 Receiving Party has not retained any copies, abstracts, compilations, summaries or  
3 any other format reproducing or capturing any of the Confidential Protected  
4 Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
5 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
6 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
7 work product, and consultant and expert work product, even if such materials  
8 contain Confidential Protected Material. Any such archival copies that contain or  
9 constitute Confidential Protected Material remain subject to this Protective Order.

10 The Court thanks counsel for their anticipated cooperation and compliance  
11 with this order.

12  
13 DATED: 7/6/2011

  
Hon. John E. McDermott

RICHARD KLEINHAMMER,

Plaintiff,

VS.

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The honorable John E. McDermott

## ACKNOWLEDGEMENT OF STIPULATED PROTECTIVE ORDER

I, \_\_\_\_\_, declare as follows:

1. My name is \_\_\_\_\_. I live at \_\_\_\_\_.

\_\_\_\_\_ I am employed as \_\_\_\_\_

\_\_\_\_\_ (state position) by \_\_\_\_\_

\_\_\_\_\_ (state name, address and telephone number of employer).

2. I am aware that the parties have entered into a Stipulated Protective Order (the “Order”) in the above-captioned litigation in the United States District Court for the Central District of California. A copy of the Order has been given to me and I have carefully read and understand it.

1 3. I promise and agree that material and information designated as "Confidential"  
2 or "Confidential – Subject To Protective Order" under the Order will be used by  
3 me only under and in accordance with the terms of the Order.  
4

5 4. I promise and agree that I will not disclose or discuss Confidential Material to  
6 or with any person other than those persons specifically listed in the Order as  
7 authorized to receive such information or material, and according to the  
8 procedures therein specified and solely related to the pending litigation.  
9

10 5. I understand that any use or disclosure of Confidential Material or any portions  
11 or summaries thereof or any information obtained therefrom in any manner  
12 contrary to the provisions of the Order, may subject me to personal liability and  
13 the sanctions of the Court.  
14

15 6. I agree to submit to the jurisdiction of the United States District Court for the  
16 Central District of California for purposes of enforcing the terms of this Order  
17 even if such enforcement proceedings occur after termination of this action.  
18

19 7. I understand that this agreement is being mailed to the plaintiff .  
20

21 I declare under the penalties of perjury under the laws of the State of California  
22 and the United States that the foregoing is true and correct.  
23

24 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_

25  
26 (Signature) \_\_\_\_\_

27 Printed Name \_\_\_\_\_  
28